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Committee on the Peaceful Uses of Outer Space
Legal Subcommittee
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Agenda item 6
Status and application of the five United Nations treaties on outer space

Draft report

Annex I

Report of the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space

1. At its 878th meeting, on 24 March 2014, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space reconvened its Working Group on the Status and Application of the Five United Nations Treaties on Outer Space under the chairmanship of Jean-François Mayence (Belgium).

2. The Working Group held [...] meetings, from 25 March to [...] April 2014. At the opening meeting, the Chair recalled the mandate of the Working Group (A/AC.105/942, annex I, paras. 4 and 6, and A/AC.105/990, annex I, para. 7).

3. The Chair also recalled that at its fifty-second session the Subcommittee had agreed to review, at its fifty-third session, the need to extend the mandate of the Working Group beyond the fifty-third session of the Subcommittee (A/AC.105/1045, para. 188).

4. The Working Group had before it the following:

(a) *United Nations Treaties and Principles on Outer Space, related General Assembly resolutions and other documents* (ST/SPACE/61/Rev.1);

(b) Conference room paper on the status of international agreements relating to activities in outer space as at 1 January 2014 (A/AC.105/C.2/2014/CRP.7);

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(c) Set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space (A/AC.105/C.2/2014/CRP.16);

(d) Response to the set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space received from Germany (A/AC.105/C.2/2014/CRP.17);

(e) Response to the set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space received from the Russian Federation (A/AC.105/C.2/2014/CRP.18 and Corr.1);

(f) Contribution of Turkey to the fifty-third session of the Legal Subcommittee (A/AC.105/C.2/2014/CRP.26);

(g) Overview by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space on the responses from member States and permanent observers of the Committee to the set of questions provided by the Chair in document A/AC.105/C.2/2013/CRP.12 (A/AC.105/C.2/2014/CRP.22).

5. The Working Group noted that the questionnaire contained in conference room paper A/AC.105/C.2/2014/CRP.16 continued to provide a good basis for discussion, within the mandate of the Working Group, on matters relevant to the status and application of the five United Nations treaties on outer space.

6. During the discussion on the questionnaire and the responses received, the Working Group noted that its continued discussion would benefit from more written contributions from member States and international intergovernmental and non-governmental organizations having permanent observer status with the Committee, in order for the Working Group to develop a collection of views for future consideration.

7. The Working Group agreed to broaden the set of questions in the questionnaire in the interests of promoting further discussions within the mandate of the Working Group, by adding a fourth question to the questionnaire for consideration by member States regarding the relationship between the five United Nations treaties on outer space and customary international law. The updated questionnaire is attached to the present report of the Working Group as appendix I.

8. The Working Group noted that the questionnaire focused on essential questions of practical relevance and served to organize and rationalize the work of the Working Group. Even after the inclusion of the new question 4, the questions presented in the questionnaire were not exhaustive and should not serve to limit the discussion of the Working Group during the fifty-fourth session of the Subcommittee.

9. The Working Group agreed that the discussions on the questions in the questionnaire could benefit from the work conducted under other items on the agenda of the Subcommittee.

10. The Working Group agreed that States members of the Committee and international intergovernmental and non-governmental organizations having permanent observer status with the Committee should again be invited to provide

comments and responses to the questionnaire. Any replies received would be made available in a conference room paper.

11. Some delegations reiterated the view that the Working Group should take a practical rather than a theoretical approach in discussing the provisions of the treaties.

12. The Working Group noted that a comprehensive discussion had taken place at its current session with respect to issues concerning the relationship between the United Nations treaties on outer space, their implementation and application, and the nature of several fundamental principles laid down in those treaties. The role of the Legal Subcommittee to provide a platform for exchange of information and views on reasons of States for acceding or not acceding to those treaties was emphasized.

13. The Working Group further noted that a discussion had taken place regarding the effect that non-binding instruments might have on the interpretation and application of provisions in the United Nations treaties on outer space.

14. The Working Group also noted that a discussion had taken place in which parallels had been drawn between concepts and principles in the United Nations treaties on outer space and similar concepts and principles found in various national legal systems, but that nevertheless the practical interpretation and application of the treaties would remain under international law.

15. The Working Group recommended that the Subcommittee, at its fifty-fourth session, in 2015, should reconvene the Working Group and review the need to extend the mandate of the Working Group beyond that session.

16. The Working Group agreed that the Chair of the Working Group, together with the Secretariat, should present to the Working Group at its next session, in 2015, an updated overview of the responses to the questionnaire, including a synthesis of views presented in writing and raised in the discussions during its sessions, to provide a basis for streamlining, broadening or tailoring the set of questions in the questionnaire in the interests of promoting further discussions within the mandate of the Working Group.

Appendix I

Set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space

1. United Nations treaties on outer space and provisions related to the Moon and other celestial bodies

1.1 Do the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty) constitute a sufficient legal framework for the use and exploration of the Moon and other celestial bodies?

1.2 What are the benefits of being a party to the Moon Agreement?

1.3 Which principles or provisions of the Moon Agreement should be clarified or amended in order to allow for wider adherence to it by States?

2. International responsibility and liability

2.1 Could the notion of "fault", as featured in articles III and IV of the Liability Convention, be used for sanctioning non-compliance by a State with the resolutions related to space activities adopted by the General Assembly or its subsidiary bodies, such as Assembly resolution 47/68 on the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, and the Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space; in other words, could non-compliance with resolutions adopted by the General Assembly or with instruments adopted by its subsidiary bodies related to space activities be considered to constitute "fault" within the meaning of articles III and IV of the Liability Convention?

2.2 Could the notion of "damage", as featured in article I of the Liability Convention, be used to cover loss resulting from a manoeuvre, performed by an operational space object in order to avoid collision with a space object or space debris, not complying with the Space Debris Mitigation Guidelines of the Committee?

2.3 Are there specific aspects related to the implementation of international responsibility, as provided for in article VI of the Outer Space Treaty, in connection with General Assembly resolution 41/65 on the Principles Relating to Remote Sensing of the Earth from Outer Space?

3. Registration of space objects

3.1 Is there a legal basis to be found in the existing international legal framework applicable to space activities and space objects, in particular the provisions of the Outer Space Treaty and of the Convention on Registration of Objects Launched into Outer Space (Registration Convention), which would allow the transfer of the registration of a space object from one State to another during its operation in orbit?

3.2 How could a transfer of activities or ownership involving a space object during its operation in orbit from a company of the State of registry to a company of a

foreign State, be handled in compliance with the existing international legal framework applicable to space activities and space objects?

3.3 What jurisdiction and control are exercised, as provided for in article VIII of the Outer Space Treaty, on a space object registered by an international intergovernmental organization in accordance with the provisions of the Registration Convention?

4. International customary law in outer space

4. Are there any provisions of the five United Nations treaties on outer space that could be considered as forming part of international customary law and, if yes, which ones? Could you explain on which legal and/or factual elements your answer is based?